



# Agenda Report

February 27, 2023

**TO:** Honorable Mayor and City Council  
**FROM:** Planning & Community Development Department  
**SUBJECT: ZONING CODE AMENDMENT: PLANNED DEVELOPMENT REGULATIONS**

## **RECOMMENDATION:**

It is recommended that the City Council:

1. Find that the project is exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3), the "common sense rule" that CEQA applies only to projects which have the potential for causing a significant effect on the environment and that where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA;
2. Make the findings to approve the Zoning Code Amendment to eliminate the ability for future Planned Development (PD) applications to be submitted; and
3. Direct the City Attorney to prepare an ordinance for the Zoning Code Amendment within 60 days consistent with the provisions set forth therein.

## **PLANNING COMMISSION RECOMMENDATION:**

On September 28, 2022, the Planning Commission conducted a public hearing and recommended approval of the Environmental Determination, adoption of the required findings and approval of a Zoning Code Amendment to eliminate the ability for future Planned Development (PD) applications to be submitted to the City.

## **BACKGROUND:**

### **Purpose of the Amendment**

The Planning Commission initiated this Zoning Text Amendment in response to concerns from the community, as well as in their own assessment, about recent PD applications, such as:

- The oversized scale and intensity of development proposed under the PD;
- The lack of consistency of new development with the General Plan, Specific Plans, and Zoning Code;
- Limited public participation in the early development of project proposals;
- The need to balance project requests with potential community benefits; and
- Lack of consideration for appropriate and contextual design for PD projects.

A specific concern raised about PD's is that requests for deviation can be significant and the project can essentially "write their own rules". The Planning Commission felt that projects should conform to adopted plans and regulations. The Planning Commission thus voted unanimously to recommend eliminating the ability for future PD projects to be submitted to the City.

### **Planned Development Regulations in the Zoning Code**

Planned Developments are a land use tool in the City's Zoning Code. According to the Zoning Code (Section 17.26, Attachment B), PDs are intended for sites with opportunity to achieve a particular mix of uses, appearance, land use compatibility, or special sensitivity to neighborhood character. Only large sites of two acres or more are eligible for PDs, in order to encourage assembly of properties and holistic development rather than piecemeal development. Flexibility in development standards is provided in order to achieve quality design, encourage variety, and avoid monotony.

Approval of a PD is a legislative act, rather than a quasi-judicial act, meaning that the review authority (City Council, with Planning Commission recommendation) has broad discretion to approve and disapprove proposed projects. A PD includes a Zoning Map Amendment to rezone a site to a "PD" designation, as well the requirement for a "PD Plan". A PD Plan establishes the land use and development standards that would apply to the PD site. The PD Plan may allow land uses that are not permitted by the existing zoning or Specific Plan. In addition, a PD Plan provides a process for the floor area ratio and residential density to exceed what would be allowed in the Zoning Code, Specific Plan, and Land Use Diagram.

There are currently two required findings for a PD, which are the same findings for a Zoning Code/Zoning Map Amendment:

- *The proposed amendment is in conformance with the goals, policies, and objectives of the General Plan; and*
- *The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City.*

There are currently 31 adopted PD's in the City (Attachment C). They are located in various areas of the City and include sites such as Desederio, Vista Del Arroyo Bungalows and 100 West Walnut (Parson's site). The most recent PD adopted by the City Council was the Affinity, at 4645-577 South Arroyo Parkway, on November 21, 2022.

## **ANALYSIS:**

At the September 28, 2022 Planning Commission meeting, staff identified two approaches to address changes to the PD regulations. The first approach was to eliminate the ability for future PD applications to be submitted to the City. The second approach was to significantly enhance the PD regulations. Examples of the enhancements were requiring new and additional findings, a community benefit and development agreement, additional public outreach, and stricter adherence to the General Plan and Zoning Code to minimize what deviations a project could request.

The Planning Commission unanimously voted, 8-0, with one absence, to recommend the elimination of the ability to apply for a new PD. Under this approach, the 31 existing PDs would remain in place and would be subject to the regulations that are currently in place. The two active PD applications would be processed to their conclusion.

In addition to the PD process, projects may utilize other zoning and land use tools to be granted flexibility from development standards in the Zoning Code. Some examples include:

- **Variance (Quasi- Judicial):** The Zoning Code permits the ability to request a Variance from a development standard if the findings for a Variance can be made by the review authority. The findings for a Variance include requiring that the request be an extraordinary circumstance, that the request is necessary to enjoy a substantial property right, that it is not detrimental to surrounding property, that the request is consistent with the General Plan and the purpose and intent of the Zoning Code/Specific Plan, and that cost is not the primary factor in the request. A Variance request may only apply to a development standard; a Variance may not be requested for land use permissions.
- **Variance for Historic Resources (Quasi-Judicial):** The Zoning Code also permits the ability to request a Variance from a development standard based on preservation of designated resources that are undergoing development, change in use or are being relocated. The review authority must find that the request is necessary to facilitate the appropriate use of an existing historic structure, would not adversely impact property within the neighborhood or historic district; and the request is in conformance with the General Plan and the purpose and intent of any applicable Specific Plan. Similar to the Variance, a Variance for Historic Resources may only apply to a development standard, no exception may be requested for a land use permission.
- **Adjustment Permit (Quasi-judicial):** Adjustment Permits are intended to promote and encourage quality development within the City. Similar to the Variances listed above, the permit allows requests for relief from development standards, but not land use permissions. Furthermore, an Adjustment Permit may not be used to increase applicable Zoning Code density or floor area ratio. Adjustment Permits are limited to projects with a minimum size of one-half acre.

They require findings that the request results in a comprehensive plan of sufficient unity to justify exceptions to the Zoning Code, results in a more enhanced environment and architectural excellence that would be possible by complying with development standards, is in conformance with the General Plan and the purpose and intent of any applicable Specific Plan and does not adversely affect adjacent properties. Where applicable, the permit allows for flexibility in development standards necessary to preserve a significant historic landmark, resource, site, or structure. Adjustment Permits are reviewed by the Planning Commission for a recommendation, and by the City Council, who makes the decision to approve or deny the permit.

- **State Density Bonus Law (SDBL):** For housing projects that provide a minimum percentage of affordable housing units on site, SDBL provides a density bonus and a package of incentives intended to help make the development of affordable housing economically feasible. A part of this package is the opportunity to request incentives and concessions from development standards or other regulations if they result in identifiable and actual cost reductions. As recently presented to the Council, based on changes in SDBL, the applicable density for these projects would be the highest density in the Zoning Code, Specific Plan or General Plan. A PD is essentially no longer needed to request the highest density permitted in the General Plan.

#### **ENVIRONMENTAL ANALYSIS:**

The proposed Zoning Code Amendment has been assessed in accordance with the criteria contained in the CEQA Guidelines, and the Zoning Code Amendment is exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3), the “common sense rule” that CEQA applies only to projects which have the potential for causing a significant effect on the environment, and that where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Since the proposed changes are limited to procedures and requirements for Planned Developments and do not pertain to any specific land use permissions or development standards, there is no possibility that the amendments will have a significant effect on the environment.

#### **CONCLUSION AND RECOMMENDATION:**

The Zoning Code has tools outside of the Planned Development process to address flexibility in development standards for exceptional circumstances, preservation of historic resources, and quality design. Eliminating the Planned Development process would remove a tool that has resulted in recent project requests that have generated community concerns. Relying on the remaining tools in the Zoning Code for flexibility would tie future projects to the purpose and intent of the Zoning Code and Specific Plans, which are reflective of significant community input in crafting the City’s vision for development. As a result, Staff Recommends moving the Planning Commission

recommendation forward to eliminate the PD application and process from the Zoning Code.

**FISCAL IMPACT:**

This action will not have a direct fiscal impact.

Respectfully submitted,

  
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Attachments: (4)

Attachment A: Findings

Attachment B: Zoning Code Section 17.26.020.C – Planned Development District

Attachment C: Map of Approved Planned Developments

Attachment D: September 28, 2022 Planning Commission Staff Report (without attachments)